Filed 3/20/07 Illinois Central Railroad Co. v. Superior Court CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ILLINOIS CENTRAL RAILROAD COMPANY, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; JOHN TYSER, Real Party in Interest.	B196471 (L.A.S.C. No. BC360266) OPINION AND ORDER GRANTING PEREMPTORY WRIT OF MANDATE

ORIGINAL PROCEEDING; petition for writ of mandate. Irving S. Feffer, Judge. Petition granted.

Lombardi, Loper & Conant, B. Clyde Hutchinson, Lori A. Sebransky and Erin Eileen Fry for Petitioner.

No appearance for Respondent.

Waters & Kraus, Michael L. Armitage, C. Andrew Waters and Dimitri N. Nichols for Real Party in Interest.

Because the plaintiff has not shown that the defendant has current contact with California or that its past contact was related to the plaintiff's claim, the plaintiff has not carried his burden to show that California may assume jurisdiction over the defendant. Because the plaintiff has not shown what type of discovery he would conduct or what he expects to find, we deny his request to conduct further discovery.

FACTS

In October 2006, after he was diagnosed with malignant pleural mesothelioma, John Tyser sued his former employer Illinois Central Railroad Company (ICRR) and others, alleging that they exposed him to cancer-causing asbestos. ICRR moved to quash service for lack of minimum contacts with California, conceding that Tyser worked as a fire fighter for ICRR in Cicero, Illinois, in the late 1940's, and that he had been exposed to asbestos, but contending that California has no jurisdiction over it because it has had absolutely no contact with California.

Tyser opposed the motion, contending ICRR advertised in the *Los Angeles Times* from 1910 through 1963, and provided copies of four advertisements from 1910, 1911, 1951 and 1963.[1] Although ICRR currently has no presence in California, it contracts with third parties, such as Union Pacific Railroad, that carry freight and passengers from California to ICRR's non-California lines.

At the hearing, the trial court said it would continue the hearing to allow Tyser to complete discovery on the jurisdiction issue, but ICRR's counsel objected, pointing out that Tyser had had two months since the date of service to conduct discovery, and the court then denied both the request for a continuance and the motion to quash, finding that "Illinois Central has had continuous and systemic contact with California" through advertisements and by contracting with third parties that "carry freight and passengers from California, connecting with Illinois Central lines."

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[1] The 1963 advertisement quotes ICRR's president, but appears to be an advertisement for the *Wall Street* Journal, not for ICRR.

DISCUSSION

As the facts are not in dispute, we independently review the record to determine whether Tyser carried his burden to demonstrate facts justifying the exercise of jurisdiction. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449.) He did not do so.

Tyser did not have to show that ICRR owns property or generally does business in California; but he did have to show that ICRR purposefully avails itself of the privilege of conducting activities within California. (*Southeastern Express Systems v. Southern Guaranty Ins. Co.* (1995) 34 Cal.App.4th 1, 6.) "'Purposeful availment' means 'an action of the defendant purposefully directed toward the forum State.' [Citation.] But 'purposeful availment' may be established even if the nonresident defendant maintains no offices, property, or employees in the forum. '[I]f a foreign corporation purposefully avails itself of the benefits of an economic market in the forum State, it may subject itself to the State's *in personam* jurisdiction even if it has no physical presence in the State.' [Citations.] A nonresident defendant who has purposefully directed its activities toward the forum state may not defeat personal jurisdiction absent compelling evidence that jurisdiction would be unreasonable. [Citations.]" (*Ibid.*)

"Even if a nonresident defendant's contacts with the forum state are not substantial, continuous, and systematic so as to support general jurisdiction, a court may still exercise specific or limited jurisdiction. This results where 1) the defendant has purposefully availed [it]self of the privilege of conducting activities in California, thereby invoking the benefits and protections of its laws; 2) the claim arises out of the defendant's California-related activity; and 3) the exercise of jurisdiction would be fair and reasonable and would comport with notions of fair play and substantial justice. (*F. Hoffman-La Roche, Ltd. v. Superior Court* (2005) 130 Cal.App.4th 782, 796.) Tyser's claim does not arise out of ICRR's California-related activity.

Tyser requests that, if we are inclined to grant the writ, that he be allowed to conduct reasonable discovery on the issue of jurisdiction—but he has not told us what

type of discovery he would conduct or what he expects to find, and therefore his request is denied. (See *Thomson v. Anderson* (2003) 113 Cal.App.4th 258, 271; *In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 127.)

DISPOSITION

As there is not a plain, speedy and adequate remedy at law, and in view of the fact that the issuance of an alternative writ would add nothing to the presentation already made, we deem this to be a proper case for the issuance of a peremptory writ of mandate "in the first instance." (Code Civ. Proc., § 1088; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1240-1241; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.) Opposition was requested and the parties were notified of the court's intention to issue a peremptory writ. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

The request for this Court to take judicial notice of the complaint is granted.

THEREFORE, let a peremptory writ issue, commanding respondent superior court to vacate its order of January 19, 2007, denying the motion of Illinois Central Railroad Company to quash service of process, and to issue a new and different order granting same, in Los Angeles Superior Court case No. BC360266, entitled John Tyser v. BNSF Railway Company et al.

The parties shall bear their own costs.

NOT TO BE PUBLISHED

THE COURT:

SPENCER, P. J.	VOGEL, J.	ROTHSCHILD, J.